

STAFF STUDY OF LEGISLATIVE TASK FORCE

PROVISION OF DEATH BENEFIT TO A DEPENDENT RELATIVE OF
PERSONNEL WHO DIE WHILE IN AGENCY EMPLOYMENT

1. PROBLEM

Because of the unique nature of this Agency and the consequent peculiarities in the status of its personnel in relation to personnel of other Government agencies, certain disadvantages are incurred by survivors of Agency personnel in procuring the monetary benefits to which they are entitled by reason of the decedent's government employment. (See Annex A)

2. FACTS BEARING ON THE PROBLEM

a. The ostensible employment of covert personnel in other governmental and non-governmental positions necessitates extensive internal processing of records, and, in some cases, an unsubstantiated claim, in applying for death benefits under existing programs available to government employees. In extraordinary cases, no death benefits however deserved may be forthcoming. (See Annex A)

b. All existing measures for death benefits - as provided by the Civil Service Retirement Act of May 22, 1920, as amended; by the Federal Employees Compensation Act of September 7, 1916, as amended; and by the War Agencies Employees Protective Association insurance policies - are contingent upon the occurrence of certain conditions precedent. (See Annexes B, C, D, respectively.) Security factors cause inordinate but unavoidable delays to arise in the acquisition, processing, and review of data required to prove the presence of the required conditions.

c. The military services are authorized to pay a death gratuity to the appropriate survivor(s) of an amount equal to six months pay at the rate received by the officer, enlisted man, or nurse at the time of his or her death. (34 U. S. C. 943 Navy; 10 U. S. C. 903 Army). (See Annex E)

d. Since World War II a trend toward gratuitous insurance for employees has appeared in the field of private industry. (See Annex F)

e. There is no general legislative precedent for a death gratuity for survivors of civilian employees of the U. S. Government. However, 5 U. S. C. 118 (f) may represent a step in this direction since it does allow a grant of money to survivors of indigenous civilians employed abroad. (See Annex G)

f. Since the emphasis in a career service program is on the selection and development of younger personnel, it is believed that a low mortality rate does and will prevail in this Agency and that the cost of such a benefit would not be excessive. (See Annex H)

Tab BL

3. DISCUSSION

In the past century strong new influences have come into the labor-management relationship. These influences have been manifested in public social security legislation and private agreements between labor and management. They have been stimulated by enlightening studies in the field of employee motivations. The effect of these influences is that wages are no longer measured solely in terms of remuneration for work performed, but also in terms of health and welfare benefits provided by management. Every employer, public and private, must reckon with the trend of employee benefits and keep pace thereof lest his efforts to attract and retain personnel be jeopardized.

4. CONCLUSIONS

a. In order to compensate for inordinate delays in receiving death benefits and thereby place personnel of this Agency on an equal basis with employees of other civilian services, and to equalize this Agency's competitive position with the military services and private industry in developing a career service, a death gratuity benefit should be incorporated in the career service program.

b. The death gratuity should be awarded immediately upon official notification of death.

c. The gratuity should be a lump sum of \$1,000.

d. Since this gratuity will be contingent solely upon death while in the Agency's employment, it should be in addition to, and not an alternative of any moneys to which the survivor(s) may be entitled by reasons of contributions by the decedent during his lifetime or under workmen's compensation provisions. It should not be subject to set off any indebtedness of the decedent. (See Annex H)

e. This gratuity should be available only to survivors of regular officers and employees of the Agency, excluding consultants, persons whose services are obtained by special contracts, and military personnel in active status assigned to duty with this Agency.

f. This gratuity should be awarded regardless of the cause of death; however, intoxication, attempts to do harm to oneself or to another, or any deliberate misconduct on the part of the employee resulting in his death should raise a presumption of ineligibility of the survivors, which presumption may be set aside at the discretion of the Director.

Tab B1

ANNEX A

Disadvantages of Survivors of Agency Personnel

The subject of financial assistance to his survivors in the period of emergency after his death is a most important one in the mind of every breadwinner. By offering a means of coping with the problems of this subject, the employer increases efficiency by building better morales and reducing turnover.

Probably the three largest employee groups are: (1) those in private industry, (2) those in military service, and (3) civilian employees of the Government. All have some form of death benefits. Free insurance programs exist and are being extended by the employers for the benefit of the first group. The military services grant a death gratuity. Members of the third group are subject to the more complicated administrative procedures and limitations of the Civil Service Retirement Act and the Federal Employees Compensation Act. (See Annexes B and C, respectively)

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Attached herewith are two tables. Table A¹ is a chronological listing of Agency employees who have died during the fiscal years 1952 and 1953. This table shows the time lapse between the date of death and the date Agency accounts were settled. The time consumed by internal Agency processing is shown in the column headed "Lapse Months."

Table A² shows the schedule of lapsed time between the date of death and the dates on which disbursements were made from the sources indicated in favor of the survivors.

The median average lapse of all cases shown in Table A¹ is 3 months. Five recently settled cases were selected to constitute Table A² since (1) they include both vouchered and unvouchered employees and (2) the delay in each of the selected cases approximates the median delay of 3 months.

For the purpose of processing records all death cases are handled on the basis of the decedent's being a staff employee.

The data shown in Table A¹ and the extension of information on some of those cases in Table A² show that a considerable portion of the total lapsed time from the date of the employee's death to the first receipt of money is attributable to the Agency's internal processing as required by security factors.

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ANNEX B

Death Payments as Provided by the Civil Service Retirement Act
of May 22, 1920, as Amended

The only lump sum amount payable to the survivor of an employee is the unpaid compensation due the decedent. (See 5 U. S. C. 61 (f).) The legislation embodied in 5 U. S. C. 61 (f) is designed "to facilitate the settlement of accounts of certain deceased civilian officers and employees of the Government." This legislation is indicative of a cognizance on the part of the Congress of the burdensome procedures and delays in making funds available to survivors. However, this legislation does not affect the annuity or refund amounts which are controlled by separate legislation.

Immediate lump sum payments of annuity or refund moneys may be made only (1) if the deceased employee has completed less than 5 years civilian service, or (2) if he has completed 5 years service but leaves no widow or children entitled to immediate or future annuity. If a deceased employee leaves a widow or children entitled to an immediate or future annuity, a delayed lump sum payment may be paid (1) when the annuity of the last survivor has terminated or (2) if the deceased employee is survived only by a widow and her right to future annuity is lost by her remarriage or her death before the age of 50. (Ques. 188-190, Page - 27-28, Pamphlet 18, U. S. C. S. C., May 1951).

The primary purpose of the Civil Service Retirement Act is that it is aimed at providing a subsistence fund over a period of years, and not at alleviating the immediate financial burdens attendant upon the death of a breadwinner. A death gratuity is aimed at the latter.

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ANNEX C

Death Benefits as Provided by the Federal Employees Compensation Act
of September 7, 1916, as Amended

In case of death resulting from injury or disease, the law provides for payment to the personal representatives of the deceased employee an amount not to exceed \$400.00 for the payment of funeral and burial expenses.

The Federal Employees Compensation Act has its roots in the common law master-servant relationship and the workmen's compensation laws which have so modified that relationship that employer responsibility for job-incurred injuries by employees has been greatly extended. The only bars to employee compensation for job-incurred injuries by Federal Employees are willful misconduct, intoxication, and intent to bring about injury to oneself or to another employee. The common law bars of assumption of risk, contributory negligence, or fellow-employee negligence are of no effect.

The only requirements for employee compensation benefit are work injuries or occupational diseases. Underlying these requirements which are so broad as to apparently make an insurer of the employer, is the basic responsibility of the employer to provide a work area free of hazards. A statement of one of the sponsors of the bill which subsequently was enacted as the Act of September 7, 1916, is germane: "...accidents do happen even in occupations not usually denominated hazardous. If under such circumstance an accident does happen, it is certainly because at that particular time and under these particular circumstances there was some hazard." (Congressional Record (House), July 12, 1916, Vol. 53, Page 10892).

Employee compensation is not a largesse of the Government but is a fulfillment of a moral obligation, hence its value as an inducement to career service is neutralized and the acquisition of benefits is delayed by procedural requirements.

Tab B1

ANNEX D

Death Payments as Provided by the War Agencies Employees
Protective Association

The War Agencies Employees Protective Association was founded during World War II when unrestricted life insurance was unavailable to many civilian U. S. Government employees who were to serve overseas. The service of this Association has continued and offers unusual benefits and low cost coverage. It is contemplated that membership in the Association will no longer be limited to persons actually preparing to embark, but will be extended to those who indicate an intent to serve overseas.

Attached herewith as Table D¹ is a table describing War Agencies Employees Protective Association insurance cost and coverage.

The merits of this insurance program cannot be questioned; however, the employee who chooses to avail himself of the program must undertake a financial obligation to do so. Therefore, the employee who already carries insurance which covers him outside the continental limits of the United States and/or already carries insurance which he desires to retain without incurring additional obligations may find the opportunity of War Agencies Employees Protective Association insurance beyond his reach.

The attraction of the insurance program as a career - inducing benefit is limited to those who can and will avail themselves of it. A death gratuity benefit would be available and attractive to all employees.

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TABLE D¹

<u>Age Group</u>	<u>Basic Salary</u>	<u>Amount of Basic Policy</u>	<u>Current Dividend Life Insurance</u>	<u>Additions Accidental Death Benefit</u>	<u>Total Coverage</u>	<u>Cost Per Month</u>
Up to 40 incl.	Less than \$3,200 \$3,200 & over	\$ 5,000 10,000	\$1,000 2,000	\$ 7,500 15,000	\$13,500 27,000	\$ 4.17 8.33
41-50 incl.	Less than \$3,200 \$3,200 & over	\$ 5,000 10,000	\$1,000 2,000	\$ 7,500 15,000	\$13,500 27,000	\$ 5.21 10.42
51-65 incl.	Less than \$3,200 \$3,200 & over	\$ 5,000 10,000	\$1,000 2,000	\$ 7,500 15,000	\$13,500 27,000	\$ 6.25 12.50

ANNEX E

Death Gratuity in the Military Services

The Military Services have been authorized since 1908 (35 Stat. 128) to pay a death gratuity consisting of an amount equal to six months pay at the rate received by the officer, enlisted man, or nurse at the time of his or her death, the only requirement being that death is caused by wounds or disease while on active duty. (34 U. S. C. 943, NAVY), (10 U. S. C. 903, ARMY).

As can be found stated in Vol. 58 Congressional Record, P. 5693, this death gratuity benefit is of a long standing and is designed to tide over the emergency caused by the death of the head of a family. This intent was reaffirmed in an amendment subsequent to the case of Spotswood v. U. S., 80 Ct. Cl. 836, 1935. The decision in the Spotswood case stated that a death gratuity became part of the decedent's estate and was subject to distribution accordingly. The present wording of the U. S. Code reflects the amendment that the gratuity be paid directly to designated persons for the purpose of implementing the legislative intent.

The power to award death gratuities is vested in the Secretaries of the respective departments and it may be exercised "immediately upon official notification of death."

There is no statement that such a gratuity is subject to set-off of any indebtedness of the decedent. Since it is designed as a right of the survivor, it is not likely that such a set-off provision would be present. The conditions of active duty and official notice of death are readily established (except in those missing in action cases which are otherwise covered), therefore the delays of proving eligibility are avoided.

The U. S. Court of Claims in Lemly v. U. S., 1948, 75 F. Supp. 248, 109 Ct. Cl. 760, stated that provisions for compensation of injuries and diseases contracted by military personnel "were enacted for motives of public policy and should not be narrowly construed." This statement is broad enough to admit the implication that the public interest will be served by the existence and liberal construction of benefit provisions, in that career military service will be fostered. The public interest would also be served by fostering the development of a career intelligence service.

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ANNEX F

Comparable Benefit in Private Industry

Although an insurance program at the employer's expense differs from a gratuity benefit, they have, from the viewpoint of the employee, the same effect. Consideration has therefore been given to the extent of free insurance programs in private industry.

In a paper entitled "Trends in Employee Benefits", contained in the Proceedings of the Silver Bay Conference on Human Relations in Industry, 1952, James M. Black, of Associated Industries of Cleveland, reported on a survey of 104 leading Cleveland companies. On page 58 of the above-mentioned paper, it is stated:

"Group life insurance - usually between \$1000 and \$2000 - is available at company expense at almost all companies employing 1000 or more people. This is not a recent development. The trend in this direction has been noticeable ever since World War II, and it was accelerated after the Ford and Bethlehem pension settlements in 1949."

A further indication of the extent of free insurance on a nationwide scale may be found in the Digest of Selected Health, Insurance, Welfare, and Retirement Plan under Collective Bargaining, published by the Bureau of Labor Statistics in August, 1951. Of the 37 firms constituting the base of the survey, 10 provided insurance at company expense. Among these 10 listed were the American Woolen Co., the Bigelow-Sanford Carpet Co., the Kaiser-Frazer Corp., and the Minneapolis-Honeywell Regulator Co.

These statistics reflect (1) the place in the employee's mind of the necessity for financial assistance to his survivors in the event of his death, and (2) the recognition on the part of management of the value of such a benefit as increasing efficiency by inducing employee security and continued employment. The experience of private industry in this regard might well be applied to Government service.

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ANNEX G

Existing Limited Death Gratuity for Civilian Employees

Although there is no direct precedent for a death gratuity as proposed herein, it is believed that 5 U. S. C. 118 (f), which is quoted below is of significant bearing:

(Public - No. 181 - 76th Congress)
(Chapter 286 - 1st Session)
(S. 1523)

AN ACT

To authorize the payment of burial expenses and expenses in connection with last illness and death of native employees who die while serving in offices abroad of executive departments of the United States Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the head of any executive department, which maintains permanent staffs of employees in foreign countries is hereby authorized to pay out of any appropriation available to the department concerned for miscellaneous or contingent expenses, burial expenses, and expenses in connection with last illness and death, not in excess of \$100 in any one case, of the native employees of such department in those countries with respect to which the Secretary of State shall determine it is customary for employers to pay such expenses; and the head of any executive department, which maintains permanent staffs of employees in foreign countries where such custom does not exist, is authorized, upon finding that the immediate family of the deceased is destitute, to make such payments within the limitations prescribed above to the family, heirs-at-law, or persons responsible for the debts of the deceased, as the officer in charge of the office abroad in which the deceased was employed shall determine to be proper.

"Approved July 15, 1939"

This legislation is directly applicable only to indigenous employees of the U. S. Government in foreign lands, however, the latter portion thereof, beginning after the semi-colon, contains an expression of recognition of a non-contributory award to civilian employees of the Government without the qualification that injury or death occur in the performance of duty.

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ANNEX H

Cost to Agency of Death Gratuity Benefit

During the past two years, about [] Agency employees died. The total cost to the Agency over this period would have approximated []. Considering this sum in the light of the total number of Agency employees, the cost per employee covered would be very small. The cost per employee is the counterweight in determining the advantages to the Agency.

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The emphasis in a career service program must be on the selection and development of younger personnel. Over the years, the fewer positions in the higher scale of the service will cause a natural selection out process to be operative. This process will minimize the cyclical factor of groups of young personnel growing old at the same time.

A career service program is based on selectivity and reduced numbers of personnel. If the sums provided for career benefits are conducive to that end, those sums may well be counterbalanced by fewer salaries and reduced administrative costs resulting from a lower turnover percentage.

Since a straight gratuity would involve a minimum of administrative procedures, the cost of administration of such a benefit would not be a significant addition to the over-all cost structure.

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ANNEX I

Gratuity Not a Bar or Set-Off to Other Moneys

The sole requirement for a death gratuity as herein proposed should be death while in the Agency's employ. The administrative delays imposed by security considerations could thereby be avoided and the optimum value as a career inducement could be derived.

As stated in other portions of this study, existing death provisions are conditioned upon the presence of certain facts (as regards Civil Service Retirement or Employee Compensation) or upon consideration by the employee (War Agencies Employee insurance). They arise out of situations which are over and above the mere fact of employment, therefore a right to any moneys which may accrue from such situations should not be a bar to moneys due from the naked relationship of employment.

Since the right to such a gratuity would be contingent upon employment at the time of death, and no right would become vested until such happening, the authority of the Director under Sect. 102 (c) of the National Security Act of 1947 could be exercised without fear of a claim from a survivor or survivors of an employee who had been terminated.